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May 12, 2000

Rosemary Center, Esq.  
Office of the General Counsel  
Kentucky Registry of Election Finance  
140 Walnut Street  
Frankfort KY 40601

Re: Request for advisory opinion

Dear Counsel:

This is a request for an advisory opinion pursuant to KRS 121.135(1) and 32 KAR 2:060 as to the following:

**Issue 1.** (a) Whether or not a candidate's committee may contribute to an issues committee, and (b) whether or not an issues committee may contribute to a candidate's committee; and

**Issue 2.** Whether or not, in view of the invalidation of statutory limits on contributions to issues committees pursuant to KREF AO 1998-011, as well as other provisions of underlying case law, it is necessary for issues committees to report certain categories of information under KRS 121.180(3)(a)3., specifically the employer and occupation of each contributor, and the total amount contributed by each contributor during the election cycle.

**COMMENT:**

Pursuant to 32 KAR 2:060, Section 1.(2) and (3), the undersigned is one of the lawyers who advise CO\$T, a political issues committee registered with the KREF April 11, 2000. The committee is engaged in soliciting contributions in order to be able to spend money in support of its agenda. In addition, the committee is required to submit reports to the Registry which disclose information required by various statutes and administrative regulations.

**Issue 1:** KRS 121.175(1) facially prohibits both candidates and issues committees from expending funds other than for the "allowable campaign expenditures" listed in that statute. In addition, 32 KAR 2:200, Section 2, applicable only to "a candidate's campaign account" specifies a number of prohibited categories of expenditure. Contributing to an issues committee is not specifically identified as a prohibited expenditure, but the Registry reportedly has taken the informal position that since such a contribution is not specifically authorized, it is prohibited.

In Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 70 L.Ed.2d 492 (1981) and Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214 (1990), implemented by the Registry in AO 1998-011, the United States Supreme Court placed individuals, groups, and committees involved in issues advocacy - as opposed to candidate advocacy - in a special, constitutionally protected category. Following the logic of an earlier case, First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), the Berkeley and Eu Courts held broadly that states may not limit either the source or the amount of contributions in support of so-called "issues advocacy." Registered issues committees in Kentucky, including CO\$T, fall squarely within the protections of that holding and there is simply no demonstrable state interest in restricting contributions in either direction, from a candidate to an issues committee, or from an issues committee to a candidate.

**Issue 2:** In Berkeley, affirmed in Eu, the U.S. Supreme Court held explicitly and unambiguously that state regulation of issues advocacy may extend only to "... [requiring] contributors [to be] identified in a public filing revealing the amounts contributed; ....[and] outlaw[ing] anonymous contributions." [70 L.Ed.2d 501]. It would seem that the "identification of contributors" under the expanded protections of Berkeley and Eu would need to extend only to the name and address of each contributor. Since there is no limit to individual contributions, and therefore no potential issues involving spousal contributions, or "bundled" contributions, there is no need for information concerning the contributor's occupation, employer, or a spouse's employer. In fact, requiring such information in the absence of clear justification or necessity appears to be a violation of a contributor's privacy rights.

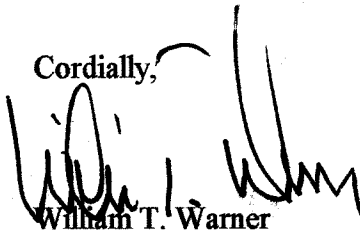
Finally, as a practical matter, the gathering, recording, and reporting of extraneous information which serves no regulatory purpose or necessity places an unwarranted burden on the CO\$T committee and its volunteers. Specifically, the reporting of cumulative contributions for individual contributors is unwarranted and unnecessary because there is no limit on what an individual, group, or corporation can contribute. Likewise, a contributor's occupation, employer, or spouse's employer [if in fact now required for an issues committee] is simply unnecessary to "identify" a contributor which is the outer boundary of what the case law permits.

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I would ask your leave to reserve the right to submit additional comments pursuant to 32 KAR 32:200, Section 3, and to appear before the Registry at the meeting where the Advisory Opinion is scheduled to be discussed and voted upon.

Cordially,



William T. Warner

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